

**AVONDALE BOROUGH
SPECIAL COUNCIL MEETING
OCTOBER 7, 2004**

COUNCIL MEMBERS PRESENT: Jay Pusey, Bob Cleveland, Jerry Poe, Russ Kilmer, Fred Bryan absent: Rose Ann Swift, Ann Bush

GUESTS PRESENT: Howard Thompson, Harold Brown, Karen Busby, Jill Nawrocki, John Langille, Sherman Toppin, Linda Poe, Frankie Poe

President Pusey called the special meeting to order at 6:30 P.M.

The purpose of the special meeting is to discuss and possibly adopt Resolution #04-10-01.

PROPOSED RESOLUTION #04-10-01 – RESOLUTION OF CENSURE

President Pusey said he wanted to bring to Jerry Poe's attention that the Resolution is from the advice of the Borough's Solicitor, Jim Marlowe. President Pusey asked if there were any questions or comments regarding the proposed resolution.

Sherman Toppin, Attorney for Jerry Poe made the following statements: The Board and members of the community have misunderstood Mr. Poe's actions. He has had some discussions with Mr. Wilkinson's attorney, Joe Riper and right now, as we speak we are negotiating an agreement of sale for the transfer of the property to Mr. Wilkinson, which was one of Mr. Poe's intentions of buying the property from the onset. There will be no profit or gain from the purchase of the property from Mr. Poe to Mr. Wilkinson, so these actions do not come as the resolution states to hinder or threaten to hinder the sewer project. Mr. Poe has been an advocate for the sewer project from the very beginning, predating Mr. Wilkinson's involvement and it would be mistaken if this Council took any belief that Mr. Poe's actions were to hinder or in anyway prevent the future sewer project. There will be no personal gain or delay as the result of the immediate pursuit of the Lena Horton property and the transfer of the property to Mr. Wilkinson will put the Council and community back to where it belongs. We recognize that whenever there is a misunderstanding of any person serving on Council there is a question of public trust, so Mr. Poe is going to recuse himself from all decisions foregoing concerning the sewer project. He will have no involvement or influence on the project even after the transfer of the property to Mr. Wilkinson. Mr. Poe is going to issue a public statement for the benefit of the community, his constituents, and Council so that some understanding can be obtained. My reputation and my involvement with this man has been of the utmost integrity and if you could just understand the level of his compassion, this has really affected him as far as

his own integrity is questioned before his peers and his community. It is just a sad misunderstanding event – perhaps a misguided approach of the property at the time; it is really a timing issue. It is the hope that this Council will give it a second look and allow Mr. Poe an opportunity to present a statement and be allowed to speak to his constituents and to Council. This Council can speak to its Counselor, Jim Marlowe about what is the best action to take in light of the development here today. We are looking at one act out of a life history of service to the Borough and I think this has to be weighed. This is a singular isolated act in a lengthy number of years of service, which should also be considered. Mr. Poe is going to make every effort to restore his name, his integrity and the integrity of this Council and this community. We are asking that this vote today be continued until more information is brought forward to Council to help more understanding of this matter.

Bob Cleveland asked the following question to Mr. Toppin: You mentioned a misunderstanding; I would like to know what the misunderstanding is, what you perceive or what Jerry perceives as a misunderstanding between Jerry and Council. Mr. Toppin said he thinks the misunderstanding is the why and the timing of Mr. Poe's actions. Mr. Toppin said he is a real estate attorney and site control is the most difficult thing when it comes to large development and gaining site control is what Mr. Poe's actions really amounts too. He obtained property to deliver it to the developer to gain site control.

Bob Cleveland said you are saying that Councilman Poe purchased this property with the intent of turning it over to someone else. Mr. Toppin said yes, his intent was to gain site control for the benefit of the sewer project so the Borough would not be subject to the question of who is going to be the highest bidder at the Tax Sale. This is a situation where there is a misguided attempt to do that and it is being misunderstood.

Bob Cleveland made a motion to adjourn to an Executive Session at 6:45 p.m., 2nd by Fred Bryan, motion carried.

President called the meeting back to order at 7:20 p.m.

President Pusey asked if there was any public comment:

Howard Thompson said he would like to hear from Mr. Poe on what his thought process was at the time he purchased the property, if he thought there was any kind of conflict. Mr. Toppin said this is part of the statement that he will make formally to the community and to Council if Mr. Poe is allowed that opportunity. Russ Kilmer asked if he was prepared to make that statement tonight. Mr. Toppin said he just received a copy of the resolution and would like more time to respond to some of the statements in the resolution. Russ Kilmer asked how long it would be before he would have a statement prepared. Mr. Toppin said he could have a statement prepared by the next meeting. Bob

Cleveland said he would like to make a motion that Resolution #04-10-01 be read and voted on tonight, 2nd by Russ Kilmer, motion carried.

President Pusey read Resolution #04-10-01:

RESOLUTION NO. 04-10-01
AVONDALE BOROUGH
CHESTER COUNTY, PENNSYLVANIA

RESOLUTION OF CENSURE

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania has, by law, declared that the holding of a public office is a public trust, and any effort to realize personal financial gain through holding a public office, other than permitted by law, is a violation of that trust; and

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania by law has also declared that the citizens of Pennsylvania have a right to be assured that the financial interests of the holders of public office do not conflict with the public trust; and

WHEREAS, the use by any public official of any confidential information received through his or her holding public office for his or her private pecuniary benefit is, by law, a conflict of interest; and

WHEREAS, Jerry F. Poe is and has been a sitting member of the Avondale Borough Council, duly elected to that position; and

WHEREAS, starting in the year 1994, Avondale Borough has, from time to time, filed Municipal Liens against a certain piece of real property in Avondale Borough having a postal address of 205 North Church Road, Avondale, PA 19311 owned or formerly owned by one Lena Horton; and

WHEREAS, the property of Lena Horton has also been liened according to law for unpaid taxes by the Chester County Tax Claim Bureau; and

WHEREAS, the liens filed by Avondale Borough and the Chester County Tax Claim Bureau have been both a matter of public record and public discussion during a number of regularly scheduled Avondale Borough Council meetings and meetings of the Avondale Borough Sewer Committee; and

WHEREAS, as a result of the unpaid taxes and liens, the Chester County Tax Claim Bureau, through Public Notice duly published and advertised, intended to expose the property of Lena Horton to a public sale, which said sale was scheduled for Monday, September 27, 2004 at 9:00 A.M. in the Chester County Court House; and

WHEREAS, Avondale Borough is engaged in the process of Upgrading and Expanding its existing Wastewater Treatment Plant and, in connection therewith, has received all necessary approvals, funding and grants for the same; and

WHEREAS, in order for the upgraded and expanded Wastewater Treatment Plant to operate optimally and in accordance with any NPDES Permit to be issued by the Commonwealth of Pennsylvania Department of Environmental Protection it is necessary for Avondale Borough to correct an existing and longstanding problem with the Avondale Borough's Sanitary Sewer Collection System; and

WHEREAS, this problem is the leaking into the Avondale Borough Wastewater Collection System of Inflow and Infiltration, which said Inflow and Infiltration has, according to the collected records of Avondale Borough, comprised, periodically, in excess of forty percent of the flow treated by the existing Wastewater Treatment Plant; and

WHEREAS, to attempt to substantially reduce the amount of Inflow and Infiltration entering the Avondale Borough Wastewater Collection System, substantial repairs to and/or

replacement of portions of the Avondale Borough Wastewater Collection System must be made; and

WHEREAS, the necessary repairs and/or replacements require the expenditure by Avondale Borough of a considerable amount of money, the amount of which greatly exceeds the Borough's ability to pay as a result of its obligation to upgrade and expand its existing Wastewater Treatment Plant; and

WHEREAS, Avondale Borough has received no grants, offers of grants, etc. for the necessary repairs and replacement to the Wastewater Collection System and the amount of money which could prove to be necessary to make such repairs and replacements might exceed Avondale Borough's borrowing capabilities as established by the Local Government Unit Debt Act; and

WHEREAS, a proposal has been made to the Avondale Borough Council by a Charles Wilkinson; and

WHEREAS, Mr. Wilkinson's proposal involves, *inter alia*, the construction of approximately two hundred forty-five town homes within the municipal limits of Avondale Borough, the prospective payment to Avondale Borough of approximately Two Million Eight Hundred Thousand Dollars (\$2,800,000.00) which would be used as a credit against legally-authorized "Tapping Fees" when these town home units are connected to Avondale Borough's Wastewater Collection System, etc.; and

WHEREAS, the proposed payment by Mr. Wilkinson to Avondale Borough of the approximately Two Million Eight Hundred Thousand Dollars (\$2,800,000.00) would be used by Avondale Borough for the purpose of reducing the Inflow and Infiltration into the Avondale Borough Wastewater Collection System; and

WHEREAS, in the opinion of the Avondale Borough Council, Mr. Wilkinson's proposal, if advanced and effected, would result in an immeasurable benefit to the citizens of Avondale Borough; and

WHEREAS, in order for Charles Wilkinson's proposal to be advanced, Charles Wilkinson, in a Work Session of the Avondale Borough Council, explained that it would be necessary for him to acquire certain lots or tracts of ground located within Avondale Borough and assemble these lots or tracts of ground; and

WHEREAS, one of these lots or tracts of ground was the Lena Horton property; and

WHEREAS, it was the understanding of the Avondale Borough Council that Charles Wilkinson intended to acquire the Lena Horton property at the Tax Sale scheduled for Monday, September 27, 2004 at the Chester County Court House at 9:00 A.M.; and

WHEREAS, at the Work Session during which Charles Wilkinson explained his proposal to the Avondale Borough Council, Avondale Borough Councillor Jerry F. Poe was present and participated in the Executive Session; and

WHEREAS, Lena Horton had been deceased since April 18, 1996 and neither the Will of Lena Horton had been probated in the Orphan's Court Division of the Court of Common Pleas of Chester County nor had an Estate been opened for Lena Horton, Deceased; and

WHEREAS, after a Work Session during which Mr. Wilkinson explained his proposal to the Avondale Borough Council, Jerry F. Poe and Linda S. Poe, his wife, acquired the property of Lena Horton, Deceased by a Deed dated August 26, 2004, which said Deed was signed by one "Willie J. Jackson, Executrix of the Estate of Lena Horton, Deceased"; and

WHEREAS, certain provisions of that Deed show that Willie J. Jackson, Executrix, was granted Letters of Administration by the Orphan's Court Division of the Court of Common Pleas

of Chester County on August 24, 2004 (Chester County File No. 1504-1248), that is, only two days before the Lena Horton property was conveyed by Willie J. Jackson, Executrix to Jerry F. Poe and Linda S. Poe, his wife; and

WHEREAS, the Deed from Willie J. Jackson, as Executrix of the Estate of Lena Horton, Deceased to Avondale Borough Councillor Jerry F. Poe and his wife Linda S. Poe was recorded August 26, 2004 in the Office of the Recorder of Deeds of Chester County, Pennsylvania in Record Book B-6264 at Pages 986, etc.; and

WHEREAS, a copy of the afore-referenced Deed is attached to this Resolution as Exhibit "A"; and

WHEREAS, the prospective acquisition of the Lena Horton property by Charles Wilkinson in furtherance of his proposal was, in the opinion of the Avondale Borough Council, "confidential information" acquired by Avondale Borough Councillor Jerry F. Poe, that is, information which was not obtainable from reviewing a public document or from making an inquiry into a publicly available source of information; and

WHEREAS, Avondale Borough Councillor Jerry F. Poe's acquisition of the Horton property was based on confidential information he received through his holding of a public office, to wit, an Avondale Borough Councillor; and

WHEREAS, Avondale Borough Councillor Jerry F. Poe's acquisition of the Horton property having apparently been based on confidential information received may result in a pecuniary benefit for himself and a member of his immediate family, to wit, his wife; and

WHEREAS, the acquisition of the Lena Horton property by Avondale Borough Councillor Jerry F. Poe and his wife Linda S. Poe may have a deleterious effect on the proposal by Charles Wilkinson to build the town homes and, attendant thereto, provide to Avondale Borough

approximately Two Million Eight Hundred Thousand Dollars (\$2,800,000.00) for purposes of reducing Avondale Borough's severe Inflow and Infiltration problem; and

WHEREAS, the acquisition of the Lena Horton property by Avondale Borough Councillor Jerry F. Poe and his wife Linda S. Poe is now both a matter of public record and public knowledge; and

WHEREAS, at the Tuesday, September 21, 2004 regular Avondale Borough Council meeting, at least two members of the general public openly questioned the propriety of the acquisition by Avondale Borough Councillor Jerry F. Poe of the Lena Horton property and, further, suggested that this acquisition was a conflict of interest; and

WHEREAS, it is the opinion of this Borough Council that the conduct of Avondale Borough Councillor Jerry F. Poe has eroded the public's confidence in the Avondale Borough Council as a whole and the individual members thereof.

THEREFORE, the Avondale Borough Council, in formal session convened, hereby **RESOLVES** that:

1. The conduct of Avondale Borough Councillor Jerry F. Poe in acquiring the real property of Lena Horton be and is hereby in the strongest terms **CONDEMNED**; and
2. To the extent permitted by law, Avondale Borough Councillor Jerry F. Poe, for this conduct is hereby **CENSURED**; and
3. This Council demands the immediate resignation of Avondale Borough Councillor Jerry F. Poe from this, the Avondale Borough Council; and

4. This matter be referred to the Office of the Attorney General of the Commonwealth of Pennsylvania for such investigation as that Office may deem appropriate; and
5. This matter be referred to the Commonwealth of Pennsylvania State Ethics Commission for such investigation as that Commission may deem appropriate.

BE IT FINALLY RESOLVED that Avondale Borough Councillor Jerry F. Poe, by his conduct, fully deserves the Censure and Condemnation of the Borough Council of Avondale Borough, Chester County, Pennsylvania.

ADOPTED this _____ day of October, 2004.

ATTEST:

AVONDALE BOROUGH COUNCIL

BECKY BROWNBAC, Secretary
Avondale Borough

BY: _____
JESSE D. PUSEY, President
Avondale Borough Council

After President Pusey read the resolution, Mr. Toppin said he would like to make a statement for the public record:

For the record and on behalf of Mr. Poe, there was no conflict of interest in the pursuit of this property because the information to obtain the property has no personal gain as a result of confidential information with this Council. Second, there is no pecuniary gain with Mr. Poe because he is transferring the property at no personal gain to Mr. Wilkinson and there are no negative effects on the sewer proposal with Mr. Wilkinson from his acts. Mr. Toppin feels that this Public Censure is an inappropriate measure of discipline for Council to pursue against Mr. Poe.

Bob Cleveland said that the Borough's Solicitor drew up the resolution and it is his opinion that it is proper and we have to act on the information that he gives us, whether it is proper, improper, we have to go by what our Solicitor tells us. John Langille asked if Council was ever in discussion about a member of Council purchasing the property to try and speed up the movement of the project. Linda Poe said they have been trying to buy the property since 2002. Russ Kilmer said that Council was aware that Jerry was interested in the property, but Council's understanding is that the real owner of the property could not be found. Mr. Kilmer said the Borough was considering purchasing the property at the Tax Sale to re-coop the money that is owed to the Borough, but when Mr. Wilkinson came in to give his proposal we elected not to do go through with it.

Fred Bryan made the following statement. A presentation was made on July 26th by Mr. Wilkinson of the property's he wanted to acquire and on the plan the Horton property was highlighted. Mr. Wilkinson's attorney, Joe Riper said they were going to buy it at the Tax Sale. The Borough's attorney was not present, and Council said to Mr. Wilkinson and Mr. Riper that the Borough was interested in the property at the sale and Mr. Riper said he hoped the Borough was going to drop the issue because they wanted to acquire the property. The issue was dropped at that time and it was left up to Mr. Riper and Mr. Marlowe to work out. The next thing Council found out that the property went off the market.

Mr. Toppin said there was discussion between the two attorneys after the presentation was made and it has something to do with what has unfolded here

Bob Cleveland made a motion to adopt Resolution #04-10-01. Russ Kilmer said he is going to second the motion, but it hurts him to do it. In tonight's Executive Session and previously we asked for information that would prove innocence and Jerry has been reluctant to bring other individuals into this situation and based on the information we have, I have to vote for the Resolution. I wish in your (Jerry's) reluctance you would have provided us with the information, but I give you credit not pulling other people in this situation. Given the information we have, I have no other choice. Mr. Toppin said there appears to be questions in the minds of some of the members of Council as to what can help with this decision and Attorney, Joe Riper is a key factor to helping us understand some of these actions. Mr. Toppin asked Council to at least consider that there is no urgency to act tonight to allow there to be some statement made by Mr. Poe that involves all of this. Mr. Kilmer said Council has asked for two weeks for this information and we have not received this information, so what leads us to believe that we will receive the information in one week, two weeks or three weeks. Mr. Toppin said it would be unfair to mention things without Joe Riper and Charles Wilkinson here today. These individuals should be here before Council votes on the Resolution. Russ Kilmer said he spoke to Mr. Wilkinson ten minutes ago and asked him some pertinent questions and his answers did not change what we see in the Resolution. Mr. Toppin said he does not see the urgency in voting on the resolution without all the information to help understand Mr. Poe's actions. Bob Cleveland said there has been a motion on the table and it has been seconded. President Pusey asked for those in favor. President Pusey said it can be tabled. Fred Bryan said he wants to be fair because

Jerry's attorney is saying there is more information and this information may prove to Council that there was no conflict. Mr. Kilmer said he will give Jerry the benefit of doubt and give him one week to come forward with the information. Mr. Kilmer said if we do not get all the information we have been requesting for two weeks, then his vote will be to pass the Resolution, so when you come, you better come with all your guns loaded or don't bother coming. We have been dancing around with this and it has been making the Council look bad and we are getting a lot of external pressure. Russ Kilmer made a motion to table this vote until October 19, 2004 at 6:30 p.m., 2nd by Fred Bryan, Bob Cleveland-nay, motion carried with a 3-1 vote.

President Pusey asked if there were any questions.

John Langille said he thought it was very fair for Council to extend this for one week for both parties.

The tape ran out and Harold Brown's comment is not noted in these minutes.

Russ Kilmer made a motion to adjourn the meeting at 7:55 p.m., 2nd by Fred Bryan, motion carried.

Respectfully submitted,

Becky Brownback
Borough Secretary

